

Chapter 376 of the Bad River Conservation Code

OPEN BURNING, BURN BARREL AND FIRE PREVENTION ORDINANCE

376.1 Purpose and Scope

- (a) Purpose. The burning of household and other waste can cause severe health problems, pollute the air, soil, and water, and pose a fire danger to the surrounding area. The purpose of this ordinance is to control and monitor the setting of fires and open or barrel burning within the exterior boundaries of the Bad River Reservation by any person in order to protect the welfare, peace, safety, environment, and property of the Bad River Reservation and its Tribal Membership.
- (b) Scope. This ordinance applies to all open and burn barrel fires within the exterior boundaries of the Bad River Reservation.

376.2 Definitions.

- (a) “Acceptable Burn Barrel” shall mean a metal drum of at least 55 gallon volume, which:
 - (1) Has been placed upon blocks made of a material that will not cause the barrel to tip or cause the ground to burn,
 - (2) Has air vents of approximately “pea size” on the sides and bottom,
 - (3) Is covered by a screen of not to exceed 1/4 inch mesh, and
 - (4) Has been inspected by the Natural Resources Department or the Fire Warden.
- (b) “Barrel Burning” shall mean any fire contained in a barrel or other type of containment where the products of combustion are emitted directly into the outdoor atmosphere and are not directed through a stack or chimney, incinerator or other similar device and the purpose of the fire is not for cooking or to provide heat to a dwelling.
- (c) “Brush” shall mean woody debris commonly associated with land clearing of all types such as landscaping, trail clearing and general yard maintenance. Additional materials which may fall into this category are clean lumber from demolition (containing no paint, stain, or preservative), leaves, bark and other woody scraps from various activities.
- (d) “Construction/Demolition Material” shall mean wood and non-wood products commonly associated with the demolition of structures, including but not limited to; shingles of all types, insulation of all types, gypsum board, tar paper, metal plumbing, ductwork, wiring, and chemically-treated wood of all types.
- (e) “Forest Fire” shall mean uncontrolled, wild, or running fires occurring on forest, marsh, field, cut-over, or other lands within the boundaries of the Bad River Reservation.
- (f) “Hazardous Waste” shall mean any commercial chemical substance designated pursuant to the Federal Water Pollution Control Act, under 33 U.S.C. Section 1321(b)(2)(A); any hazardous air pollutant listed pursuant to the Clean Air Act,

under 42 U.S.C. Section 7412; any hazardous waste defined under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended, and any other substance which constitutes a hazardous waste under tribal, state, or federal law.

- (g) “Kitchen Garbage” shall mean animal and vegetable waste resulting from the handling, preparation, cooking, and/or consumption of foods.
- (h) “Non-recyclable Material” shall mean Pyrex glass, window glass, light bulbs, mirrors, broken glass, china, Styrofoam and melamine type plastics, waxed paper, waxed cardboard, soiled paper, garbage, bottle or jar caps and any material for which there is no destination point for reclamation or processing.
- (i) “Open Burning” shall mean any fire wherein the products of combustion are emitted directly into the outdoor atmosphere and are not directed through a stack or chimney, incinerator or other similar device. “Open burning” includes, but is not limited to, brush burning.
- (j) “Owner” shall mean the person(s) or entity(ies) which hold legal or beneficial title to a burn barrel or property and the person(s) or entity(ies) which have or exercise possession of a burn barrel or property. Owner also means landlord and lessee.
- (k) “Recyclable Material” shall mean brown, clear, and green container glass, aluminum cans, steel containers, bi-metal containers, plastic containers with #1 thru #7 inside a triangle on the bottom, corrugated cardboard, newspaper, magazines, mixed paper, office paper, used motor oil, vehicle tires, and any other material for which there is a destination point named for reclamation or processing or listed as a recyclable material in the Bad River Solid Waste Ordinance.

376.3 General Provisions

- (a) Within the exterior boundaries of the Bad River Reservation, it shall be unlawful for any person to set any fire unless it shall be attended at all times and she or he has first obtained a Burning Permit from a Fire Warden duly appointed and designated by the Bad River Tribal Council, except for:
 - 1. When a fire is set and designed solely for warming the person or cooking food;
 - 2. When a fire is set for ceremonial purposes.
- (b) Warming and Cooking Fires. Any person who sets a fire solely for warming the person or cooking food shall extinguish such fire before leaving it, and upon failure to do so will be in violation of this Ordinance.
- (c) Ceremonial Fires. Any person who lights a fire for ceremonial purposes shall ensure that precautions are taken to prevent the spread of the fire outside the intended area and that the fire is attended at all times until it has extinguished itself.
- (d) Windy Conditions. Except for ceremonial purposes where adequate fire safety precautions are taken, no burning shall occur when wind speeds exceed 10 miles per hour or when wind conditions are such that sparks or embers from the fire may be spread outside the parameters listed in subsection 376.6 for safe containment of the fire.
- (e) Adequate provision shall be made to prevent fire from spreading (garden hose or other sufficient source of water, shovels, dirt, etc.).

- (f) Fires shall be constantly attended by a competent person until the fire is completely extinguished (fire remains are cold).
- (g) Fires must be completely extinguished before you leave (fire remains are cold).

376.4 Permit Application and Issuance

- (a) Permit Application. Permits may be obtained from the Bad River Fire Warden during normal business hours after filing of an application which may be obtained from the Bad River Fire Warden. The application shall contain at least the following information:
 - 1. Name, physical address, and phone number of person responsible for the burn.
 - 2. Responsible persons who may be attending the burn.
 - 3. Location of the burn (Fire Warden may, at his or her option, require an inspection of the site by the Natural Resources Department or the Fire Department)
 - 4. The signature of the applicant stating the following:
 - (A) that he or she has been given educational material regarding the environmental and health hazards of open burning,
 - (B) has read and understood the material, and
 - (C) has had an opportunity to ask questions of the Fire Warden about the burning regulations.
- (b) Permit Issuance. Permits issued pursuant to this Section shall include but not be limited to restrictions concerning: time of day, location, minimum required precautionary measures, and the length of the burning period of the permit.
- (c) No fee shall be charged for a burn permit.
- (d) If the permit is for a burn barrel, the burn barrel must be considered an acceptable burn barrel and inspected and approved by the Natural Resources Department or the Fire Warden prior to issuance of the permit.
- (e) Burn permits for burn barrels shall expire on May 31 of each year.
- (f) Burn permits for open burns expire upon completion of the open burn, but in no case beyond 30 days from the date of issuance of the permit. Subsequent burns at the same location require separate permits.

376.5 Permit Considerations

Burning permits shall be issued only after a determination by the Fire Warden that the danger to the resources will be minimized by allowing the permittee to burn if he or she complies with the conditions of the permit and takes all reasonable precautions to prevent the escape of the fire.

376.6 Permitted Burning

- (a) Open Burning
 - 1. Brush burning shall be limited to wood products only, which includes only twigs, brush, leaves, grass, and untreated, unpainted sawn wood or those items defined as brush, above.
 - 2. No construction/demolition materials or household garbage may be burned.
 - 3. No chemically or creosote treated wood may be burned.
 - 4. No woody materials which may be contaminated with other construction

materials, including but not limited to: tar paper, insulations of all types, shingles, gypsum board, paint and other wall treatments, may be burned.

5. No recyclable materials as defined in this ordinance may be burned.
6. The burning of objectionable materials such as rubber, roofing, or any material which can damage the property of another is prohibited.
7. No open fires shall be kindled within fifty feet (50') of any property line, public right-of-way, building, fence, or combustible growth or material other than that intended to be burned.
8. Burn piles may be no larger than five feet by five feet by five feet (5' by 5' by 5').
9. Burning of uncut grass, brush, or vegetation (running fire) is prohibited, except by special permit issued for exceptional circumstances only after inspection of the proposed burn site and agreement with the proposed burn by the Bad River Fire Warden and Natural Resources Department.
10. Burning may only be conducted between the hours of 6:00 PM and MIDNIGHT. Burning on Sundays is prohibited.
11. Burning is prohibited at all times when a general fire permit ban is in effect, as declared by the Bad River Fire Warden.

(b) Barrel Burning

1. Barrel burning shall be limited to burning in an acceptable burn barrel and to the burning of small woody debris and soiled or other non-recyclable paper.
2. No recyclable materials as defined may be burned.
3. No demolition materials as defined may be burned.
4. No material identified in 376.6(a) 2 - 6 may be burned.
5. Barrels must be covered while burning with a screen which will hold down flying ash. The screen must be in sound condition and have a mesh size no larger than one-quarter inch (1/4").
6. The barrel must not be contaminated with paint, oil, gasoline, or other potentially harmful or noxious substance.
7. Barrels must be continually observed by a responsible person during the burning process and completely extinguished before being left. Persons with unattended burning barrels will be considered in violation of this ordinance.
8. Barrel burning may be conducted at any hour Monday through Saturday. Burning on Sundays is prohibited.
9. Burn barrels must be located in a ten foot (10') clear area, a minimum of twenty-five feet (25') from buildings and combustibles.

376.7 Prohibited Burn Items. Burning of the following items is never permitted:

- (a) Disposable Diapers
- (b) Oil
- (c) Gasoline
- (d) Paint
- (e) Plastics (including but not limited to Styrofoam and melamine type plastics)

- (f) Recyclable material
- (g) Household trash or garbage (including kitchen garbage)
- (h) Cardboard
- (i) Non-recyclable paper containing plastic, paint or other matter which is noxious when burned
- (j) Dead animals not being processed or cooked as food products
- (k) Any material that emits dense smoke or obnoxious odors
- (l) Thermometers containing mercury
- (m) Any item known to contain mercury or lead (including batteries)
- (n) Tires
- (o) Construction/Demolition material, except for wood scraps with no paint, stain, chemical treatment or other contaminants
- (p) Hazardous Wastes

376.8 Special Authority to Restrict Burning

This Chapter includes the authority for the Bad River Fire Warden to restrict and forbid the setting of any type of fire or burning within the exterior boundaries of the Bad River Reservation, by any person, when there is a dangerously dry season. Setting of fire or burning in this particular Section will include but will not be limited to the burning of paper or garbage, burning of leaves, campfires, outside cooking units, etc. The only exceptions will be those homes where a stove or appliance is located outside the home which is needed in the preparation of food or for heat and for ceremonial uses when the Fire Warden is notified of the general location of the fire and can assure that proper fire safety precautions have been met. Proper notice will be given to the public when this restriction goes into effect by the following notification:

- (a) Posting of notices at the Tribal Office, Fire Hall, Bad River Natural Resources Department and at least one tribal enterprise, and
- (b) At the option of the Fire Warden, announcement on one or more local radio stations.

376.9 General Responsibility and Liability/Negligent Handling of any Materials Which Might Cause a Forest Fire.

- (a) General Responsibility and Liability. It is the responsibility of the owner of any land upon which a burn is conducted or the owner of a burn barrel in which burning is conducted, as well as any individual, with or without a permit issued under this chapter, to ensure that his or her fire is adequately contained and does not pose a threat to the safety of his or her own person and property and that of all others which may be harmed by the act of burning. Any private individual, including owners, with or without a permit issued pursuant to this chapter, shall be liable for any injury or property damaged by the act of burning or failure to take adequate precautions to prevent injury and damage due to his or her burning.
- (b) Forest Fire. Any person who would start, kindle, or otherwise encourage a forest fire through the careless use of smoking materials, fireworks, campfires, motorized equipment, flammable substances, or any other material or item of equipment shall be in violation of this Section of the Ordinance.

376.10 Public Nuisance

Any private individual affected by another private individual's burning is authorized by this Chapter to bring a private citizen suit under this section to abate damages due to smoke or fire conditions which create a nuisance, or visual, or odor problems or to recover damages for injury or property damage caused by another private individual's fire.

- (a) Initiation of a citizen suit shall not prohibit or limit the right of the Tribe to initiate enforcement action under this section, nor shall it require the Tribe to take enforcement action.
- (b) This Chapter does not provide a right of action for a citizen suit against the Tribe or any Tribal entity for any reason.

376.11 Effective Date and Severability

- (a) Effective Date. This Ordinance shall be effective upon the date of adoption by resolution of the Bad River Tribal Council, until amended or otherwise expressly invalidated by the Tribal Council.
- (b) Severability. If any section, provision, or portion of this Ordinance is judged unconstitutional or invalid by the Bad River Tribal Court, the remainder of this Ordinance shall not be affected.

376.12 Enforcement/Evidence

- (a) The Bad River Fire Warden and Fire Department, Conservation Wardens and the Bad River Police Department are authorized to issue citations for violations of this Chapter.
- (b) The Bad River Fire Warden and Fire Department, the Bad River Conservation Wardens, and the Bad River Police Department may issue immediate cease and desist orders for suspected violations or when burning appears to create an unsafe condition. Such cease and desist orders may be issued regardless of whether a permit has been issued or whether a citation has been issued. The cease and desist order shall expire within 36 hours of issuance if a citation is not issued.
- (c) The Bad River Fire Warden, Fire Department, the Bad River Conservation Wardens, and the Bad River Police Department are authorized to enter private property, tribal, trust, allotted, or leased property at all times to inspect all outdoor fires.
- (d) Citations for violations shall include, but not be limited to the following: an affidavit of a member of the Bad River Fire Warden, Fire Department, the Bad River Conservation Wardens, or the Bad River Police Department stating the conditions occurring during the burn or the manner of material being burned; or photographs of the burn site and material being burned when accompanied by an affidavit describing the date, time, location of the fire, the ownership, if known, of the barrel, and any other relevant conditions.

376.12 Jurisdiction/Penalties

- (a) The Bad River Tribal Court shall have jurisdiction to hear all matters prosecuted

- pursuant to this Chapter, including citizen suits.
- (b) The Bad River Tribal Court may impose any of the following penalties for violations of this Chapter, singly or in any combination:
1. Immediate injunction against burning;
 2. Restitution for damages caused by violations, including damages for any harm to any tribal resources;
 3. A civil forfeiture of not to exceed \$1,000.00. Each day of any continuing violation may be charged as a separate violation and a separate forfeiture may be imposed;
 4. In addition to a civil forfeiture, any personal property, including vehicles and other equipment, which has been used connection with the violation of this chapter may be seized and forfeited pursuant to the appropriate sections of the Tribal Court Code. Seizure of burn barrels or other items which are too hot to move may be effected by posting of a copy of the citation on or near the item seized until the item has cooled sufficiently for removal.
- (c) Citizen suit damages are separate from and may be in addition to and may duplicate any damages requested by the Tribe under this Section.

Legislative History: This Chapter 376 was enacted as a new chapter in the Bad River Conservation Code in its entirety on 5/1/2002 by Tribal Council Resolution Number 5-1-02-265.

Amendments: *The following amendments were approved and enacted by Resolution No. 16-1-03-149 on 10/1/2003: Section 376.6(a)6 -- add "an" before "other." Section 376.6(a)7 – add hyphens to "right-of-way." Section 376.6 (a)10 – delete "Burning after dusk or before dawn in prohibited. Open burning hours from May-October will be from 6:00 AM to 8:00 PM" and replace with "Burning may only be conducted between the hours of 6:00 PM and MIDNIGHT. Burning on Sundays is prohibited." Section 376 (b)1 – add "and to" following the words "burn barrel." Section 376.6(b)7 -- add "Persons with unattended burning barrels will be considered in violation of this ordinance." Section 376.6(b)8 – delete "All barrel burning must be done before the hours of 6:00 pm local time except when snow cover is sufficient, burning may be done at any time" and replace with "Barrel burning may be conducted at any hour Monday through Saturday. Burning on Sundays is prohibited."*